

The Honorable Robert J. Bryan

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By Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BURLINGTON NORTHERN RAILROAD
CO., a foreign corporation,

Plaintiff,

v.

WASHINGTON NATURAL GAS CO.,
a Washington corporation, et al.,

Defendants,

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH SIMON & SONS, INC., et al.,

Defendants,

NO. C89-155TB
(Consolidated with
C89-489TB & C90-5373B)

CONSENT DECREE FOR
SETTLEMENT BETWEEN THE
UNITED STATES OF AMERICA
AND WASHINGTON NATURAL
GAS COMPANY

USEPA SF



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I. BACKGROUND

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

2. The United States in its complaint seeks, inter alia:

(a) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Tacoma Historical Coal Gasification Operable Unit (also known as the "Tacoma Tar Pits") within the Commencement Bay - Nearshore Tideflats Superfund Site in Tacoma, Washington, ("Site"), together with accrued interest;

(b) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (c) payment of penalties and damages.

3. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Washington (the "State") of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

4. EPA notified the Department of the Interior, Bureau of Indian Affairs, and the Puyallup Tribe of Indians of the proposed remedial action plan which formed the basis of the Record of Decision.

1 5. Washington Natural Gas Company ("WNG") does not admit any
2 liability to the Plaintiff arising out of the transactions or
3 occurrences alleged in the complaint. WNG has entered into this
4 Consent Decree strictly for the purpose of compromising claims which
5 are disputed, obtaining complete contribution protection against all
6 claims asserted against WNG in the above-captioned consolidated
7 actions, as is provided by CERCLA, and avoiding the expense of
8 further litigation.

9 6. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA
10 placed the Commencement Bay - Nearshore Tidelands Site on the
11 National Priorities List, set forth at 40 C.F.R. Part 300,
12 Appendix B.

13 7. In response to a release or a substantial threat of a
14 release of hazardous substances at or from the Site, Washington
15 Natural Gas Company, Burlington Northern Railroad Company, Hygrade
16 Food Products Company and Joseph Simon & Sons commenced a Remedial
17 Investigation and Feasibility Study ("RI/FS") for the Site.

18 8. The parties named in the preceding paragraph completed a
19 Remedial Investigation ("RI") Report in September 1987, and completed
20 a Feasibility Study ("FS") Report in July 1987.

21 9. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
22 published notice of the completion of the FS and of the proposed plan
23 for remedial action in a major local newspaper of general
24 circulation, and provided an opportunity for written and oral
25 comments from the public on the proposed plan for remedial action. A
26 copy of the transcript of the public meeting is available to the
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1 public as part of the administrative record upon which EPA based the
2 selection of the response action.

3 10. The decision by EPA on the remedial action to be
4 implemented at the Site is embodied in a final remedial action plan
5 or "Record of Decision" ("ROD"), executed on December 30, 1987. The
6 State of Washington and the public had a reasonable opportunity to
7 review and comment on the proposed plan for remedial action. The ROD
8 includes a responsiveness summary to the public comments. Notice of
9 the final remedial action or ROD was published in accordance with
10 Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

11 11. Based on the information presently available to EPA, EPA
12 believes that the Work will be properly and promptly conducted by WNG
13 if conducted in accordance with the requirements of this Consent
14 Decree and its appendices.

15 12. Solely for the purposes of Section 113(j) of CERCLA,
16 42 U.S.C. § 9613(j), the Remedial Action selected in the ROD and the
17 Work to be performed by WNG shall constitute a response action taken
18 or ordered by the President.

19 13. The Parties recognize, and the Court by entering this
20 Consent Decree finds, that this Consent Decree has been negotiated by
21 the Parties in good faith and implementation of this Consent Decree
22 will expedite the cleanup of the Site and will avoid prolonged and
23 complicated litigation between the Parties, and that this Consent
24 Decree is fair, reasonable, and in the public interest.

1 II. JURISDICTION

2 14. This Court has jurisdiction over the subject matter of this
3 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606,
4 9607, and 9613(b). This Court also has personal jurisdiction over
5 WNG. Solely for the purposes of this Consent Decree and the
6 underlying complaint, WNG waives all objections and defenses that it
7 may have to jurisdiction of the Court or to venue in this District.
8 WNG shall not challenge EPA's motion for entry of this Consent Decree
9 or this Court's jurisdiction to enter and enforce this Consent
10 Decree.

11 III. PARTIES BOUND

12 15. This Consent Decree applies to and is binding upon the
13 United States and upon WNG and its successors and assigns. Any
14 change in ownership or corporate status of WNG including, but not
15 limited to, any transfer of assets or real or personal property shall
16 in no way alter WNG's responsibilities under this Consent Decree.

17 16. WNG shall provide a copy of this Consent Decree to each
18 contractor hired to perform the Work (as defined below) required by
19 this Consent Decree and to each person representing WNG with respect
20 to the Site or the Work, and shall condition all contracts entered
21 into hereunder upon performance of the Work in conformity with the
22 terms of this Consent Decree. WNG or its contractors shall provide
23 written notice of the Consent Decree to all subcontractors hired to
24 perform any portion of the Work required by this Consent Decree. WNG
25 shall nonetheless be responsible for ensuring that its contractors
26 and subcontractors perform the Work contemplated herein in accordance
27 with this Consent Decree. With regard to the activities undertaken

1 pursuant to this Consent Decree, each contractor and subcontractor
2 shall be deemed to be in a contractual relationship with WNG within
3 the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

4 IV. DEFINITIONS

5 17. Unless otherwise expressly provided herein, terms used in
6 this Consent Decree which are defined in CERCLA or in regulations
7 promulgated under CERCLA shall have the meaning assigned to them in
8 CERCLA or in such regulations. Whenever terms listed below are used
9 in this Consent Decree or in the appendices attached hereto and
10 incorporated hereunder, the following definitions shall apply:

11 (a) "CERCLA" shall mean the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980, as amended,
13 42 U.S.C. §§ 9601 et seq.

14 (b) "Consent Decree" shall mean this Decree and all appendices
15 attached hereto (listed in Section XXX). In the event of conflict
16 between this Decree and any appendix, this Decree shall control.

17 (c) "Contractor" shall mean architects, engineers,
18 environmental consultants and technicians, scientists and companies
19 or individuals engaged in the building trades and retained by WNG to
20 perform the Work required under this Consent Decree.

21 (d) "Day" shall mean a calendar day unless expressly stated to
22 be a working day. "Working day" shall mean a day other than a
23 Saturday, Sunday, or Federal holiday. In computing any period of
24 time under this Consent Decree, where the last day would fall on a
25 Saturday, Sunday, or Federal holiday, the period shall run until the
26 close of business of the next working day.

(e) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

(f) "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 99 of Section XXII. Future Response Costs shall include all such costs, including direct and indirect costs, paid by the United States in connection with the Site subsequent to the date of entry and approval of this Consent Decree.

(g) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

(h) "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

(i) "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

(j) "Parties" shall mean the United States and WNG.

(k) "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred in reviewing or developing plans, reports and other items pursuant to the Administrative Order, verifying the response actions, or otherwise implementing, overseeing, or enforcing the Administrative Order, including, but not limited to, payroll costs, contractor costs, travel costs and laboratory costs and paid with regard to the Site on or prior to the date of entry and approval of this Consent Decree.

(l) "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD and SOW.

(m) "Plaintiff" shall mean the United States.

(n) "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

(o) "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on December 30, 1987, by the Regional Administrator, EPA Region 10, and all attachments thereto.

(p) "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by WNG to implement the final plans and specifications submitted by WNG pursuant to the Remedial Design Work Plan and approved by EPA.

1 (q) "Remedial Action Work Plan" shall mean the document
2 submitted by WNG pursuant to Paragraph 26.a of this Consent Decree
3 and described more fully in Paragraph 26.b.

4 (r) "Remedial Design" shall mean those activities to be
5 undertaken by WNG to develop the final plans and specifications for
6 the Remedial Action pursuant to the Remedial Design Work Plan.

7 (s) "Remedial Design Work Plan" shall mean the document
8 submitted by WNG pursuant to Paragraph 25.a of this Consent Decree
9 and described more fully in Paragraph 25.b.

10 (t) "Remedial Design/Remedial Action Schedule" shall mean the
11 schedule set forth in Section 4 of the Framework for Remediation
12 contained in the Remedial Design Work Plan and any modifications
13 thereto agreed to by EPA and made in accordance with this Consent
14 Decree.

15 (u) "Section" shall mean a portion of this Consent Decree
16 identified by a roman numeral.

17 (v) "Site" shall mean the Tacoma Historical Coal Gasification
18 Operable Unit (also known as the "Tacoma Tar Pits") within the
19 Commencement Bay - Nearshore Tideflats Superfund Site, encompassing
20 approximately 30 acres, located at 2202 River Street, Tacoma, Pierce
21 County, Washington, and depicted generally on the map attached as
22 Appendix C.

23 (w) "State" shall mean the State of Washington.

24 (x) "Statement of Work" or "SOW" shall mean the statement of
25 work for implementation of the Remedial Design, Remedial Action, and
26 Operation and Maintenance at the Site, as set forth in Appendix B to
27

1 this Consent Decree and any modifications made in accordance with
2 this Consent Decree.

3 (y) "Subcontractor" shall mean architects, engineers,
4 environmental consultants and technicians and individuals engaged in
5 the building trades who enter into a contract with Contractors
6 retained by WNG to perform the Work required under this Consent
7 Decree.

8 (z) "Supervising Contractor" shall mean the principal
9 contractor retained by WNG to supervise and direct the implementation
10 of the Work under this Consent Decree.

11 (aa) "United States" shall mean the United States of America.

12 (bb) "WNG" shall mean Washington Natural Gas Company.

13 (cc) "Waste Material" shall mean (1) any "hazardous substance"
14 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
15 pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C.
16 § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA,
17 42 U.S.C. § 6903(27).

18 (dd) "Work" shall mean all activities WNG is required to perform
19 under this Consent Decree, except those required by Section XXVI
20 (Retention of Records).

21 V. GENERAL PROVISIONS

22 18. Objectives of the Parties

23 The objectives of the Parties in entering into this Consent
24 Decree are to: (a) protect public health or welfare or the
25 environment through the design and implementation by WNG of cost-
26 effective response actions at the Site: (b) reimburse Future Response
27

Costs to the United States; and (c) settle penalty claims by payment of the amount specified in Paragraph 67 herein.

19. Commitments by WNG

a. WNG shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. WNG shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

b. WNG may seek reimbursement of costs it incurs to finance the Work through the funds available in the "Tacoma Tar Pits Site Trust Fund" established in accordance with Paragraph 20 of the Consent Decree For Settlement Between the United States of America and Joseph Simon & Sons, Inc. ("Simon Decree"). Under the Simon Decree, Simon is required to create a "Trust Fund Agreement," in the form of Appendix D to this Consent Decree, for the collection, administration and disbursement of Simon's share of response costs for the Site. The monies in the Tacoma Tar Pits Site Trust Fund shall be available for the reimbursement of response costs incurred for the performance of the Work. In order to obtain reimbursement of monies from the Tacoma Tar Pits Site Trust Fund, WNG must submit to EPA a statement of costs incurred and documentation demonstrating the incurrence of such costs in accordance with the requirements of this Consent Decree for the performance of the Work. Within sixty (60) days following receipt of WNG's statement and documentation demonstrating costs incurred, EPA agrees to direct the trustee to disburse funds from the Tacoma Tar Pits Site Trust Fund to reimburse WNG for the costs of Work performed at the Site.

c. Several other settlements have been entered into by the United States and various other defendants in this matter. These settlements require the defendants to make payments to the "Hazardous Substances Response Trust Fund" or "Superfund" established in accordance with Section 221 of CERCLA, 42 U.S.C. § 9631. The monies paid or to be paid by these defendants will be applied, until said monies are exhausted, to reimburse the United States first for its Past Response Costs and second for its Future Response Costs incurred and to be incurred for the Site. EPA agrees to provide documentation to the trustee identified in Paragraph 19.b. above, and to WNG to reflect response costs incurred by the United States and reimbursed from monies paid to the Superfund by other settling defendants in this matter.

20. Compliance With Applicable Law

All activities undertaken by WNG pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. WNG must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The Work and other activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

21. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e) and § 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval,

1 WNG shall submit timely and complete applications and take all other
2 actions necessary to obtain all such permits or approvals.

3 b. WNG may seek relief under the provisions of
4 Section XIX (Force Majeure) of this Consent Decree for any delay in
5 the performance of the Work resulting from a failure to obtain, or a
6 delay in obtaining, any permit required for the Work.

7 c. This Consent Decree is not, and shall not be construed
8 to be, a permit issued pursuant to any federal or state statute or
9 regulation.

10 22. Sale or Lease of Property

11 a. The obligations regarding access (as set forth in
12 Section X), written notification (as set forth in Paragraph 22.c),
13 and restrictions on property use (as set forth in Paragraph 23) shall
14 run with the land, and shall be binding upon WNG and any and all
15 persons who acquire any interest in the property included in the
16 Site.

17 b. Within 15 days after entry of this Consent Decree, WNG
18 shall record a copy of this Consent Decree, together with a notice
19 setting forth in detail the obligations under Paragraph 22.a
20 ("Notice"), with the Auditor's Office, Pierce County, State of
21 Washington, and shall provide copies of said Decree and Notice to the
22 City of Tacoma Planning Department.

23 c. At least 30 days prior to a sale or lease by WNG of
24 any real property interest included in the Site, WNG shall provide
25 written notification to EPA of the anticipated sale or lease,
26 including the name, address, and telephone number of the proposed
27 grantee.

d. Any deed, title or lease conveying an interest by WNG in the property included in the Site shall: (1) state that said property is subject to this Consent Decree and the Notice; (2) reference the recorded location of the Consent Decree and Notice; and (3) set forth as covenants the obligations applicable to the property under Paragraph 22.a.

e. It shall be a pre-condition of any sale or lease of a real property ownership interest by WNG, that the grantee must first enter into an administrative order on consent with EPA whereby the grantee agrees to abide by the obligations pertaining to access, written notification, and restrictions on property use referenced in Paragraph 22.a.

f. In the event of any sale or lease by WNG of an interest in the real property included in the Site, all obligations under this Consent Decree, including but not limited to the obligation to provide or secure access pursuant to Section X, shall continue to be met by WNG. In addition, if the United States approves, a grantee or lessee may perform some or all of the Work under this Consent Decree. In no event shall the sale or lease of an interest in property by WNG included in the Site, release or otherwise affect the obligation of WNG to comply with all requirements of this Consent Decree.

23. Restrictions on Property Use

Restrictions upon the use of groundwater beneath the Site include a prohibition against the pumping of groundwater in shallow aquifers for a purpose other than monitoring. In addition, hazardous substances will remain under the cap at the Site, and post-remedial

1 action is restricted such that use of the property must never be
2 allowed to disturb (a) the integrity of the cap, (b) any component of
3 any containment system, or (c) the monitoring system, unless EPA
4 finds the disturbance:

5 (i) is necessary for the proposed use of the property and
6 will not increase the potential hazard to human health or the
7 environment; or

8 (ii) is necessary to reduce a threat to human health or the
9 environment.

10 VI. PERFORMANCE OF THE WORK BY WNG

11 24. Selection of Supervising Contractor.

12 a. All aspects of the Work to be performed by WNG
13 pursuant to Sections VI (Performance of the Work by WNG), VII
14 (Additional Response Actions), VIII (U.S. EPA Periodic Review), and
15 IX (Quality Assurance, Sampling and Data Analysis) of this Consent
16 Decree shall be under the direction and supervision of Ebasco
17 Environmental in its capacity as the Supervising Contractor. If at
18 any time WNG proposes to change the Supervising Contractor, WNG shall
19 notify EPA in writing, and shall obtain authorization from EPA, after
20 a reasonable opportunity for review and comment by the State, prior
21 to the new Supervising Contractor performing, directing, or
22 supervising any Work under this Consent Decree.

23 b. If EPA disapproves a proposed Supervising Contractor,
24 EPA will notify WNG in writing. WNG shall submit to EPA and the
25 State a list of contractors, including the qualifications of each
26 contractor, that would be acceptable to it within 30 days of receipt
27 of EPA's disapproval of the contractor previously proposed. EPA will

1 provide written notice of the names of any contractor that it
2 disapproves and an authorization to proceed with respect to any of
3 the other contractors. WNG may select any contractor from that list
4 that is not disapproved and shall notify EPA and the State of the
5 name of the contractor selected within 21 days of EPA's authorization
6 to proceed.

7 c. If EPA fails to provide written notice of its
8 authorization to proceed or disapproval as provided in this Paragraph
9 and this failure prevents WNG from meeting one or more deadlines in a
10 plan approved by the EPA pursuant to this Consent Decree, WNG may
11 seek relief under the provisions of Section XIX (Force Majeure)
12 hereof.

13 25. Remedial Design.

14 a. WNG has submitted a work plan to EPA for the design of
15 the Remedial Action at the Site ("Remedial Design Work Plan"). The
16 Remedial Design Work Plan shall provide for design of the remedy set
17 forth in the ROD and in accordance with the SOW. The Remedial Design
18 Work Plan consists of the Framework for Remediation, dated
19 September 23, 1991, and the Work Plan, Sampling and Analysis Plan,
20 Health and Safety Plan, Quality Assurance Plan and the Monitoring
21 Plan, all of which Plans are dated May 1990 and are collectively
22 referred to in this paragraphs as "the Plans." The Framework for
23 Remediation has been agreed to and approved by EPA. WNG shall submit
24 to EPA, within thirty (30) days of entry of this Consent Decree,
25 amendments to the Plans which specify changes, additions, and
26 modifications necessary to conform remedial design activities
27 described in the Plans to the Framework for Remediation and to make

1 such activities consistent with the SOW. Upon approval by EPA of the
2 amendments, the Remedial Design Work Plan, including the Plans,
3 amendments thereto, and Framework for Remediation shall be
4 incorporated into and become enforceable under this Consent Decree.

5 b. The Remedial Design Work Plan includes plans and
6 schedules for implementation of all remedial design and pre-design
7 tasks identified in the SOW, including, but not limited to, plans and
8 schedules for completion of (1) 30% Design submittal for Phases I, II
9 and III; (2) Phase I 95% Remedial Design submittal; (3) Phase I Final
10 Design submittal; (4) Phase II and III 60% Remedial Design submittal;
11 (5) Phase II and III 95% Remedial Design submittal; and (6) Phase II
12 and III Final Design submittal, which schedule is set forth in
13 Section 4 of the Framework for Remediation. Finally, the Remedial
14 Design Work Plan includes a schedule for completion of the Remedial
15 Action Work Plan, which schedule is also set forth in Section 4 of
16 the Framework for Remediation.

17 c. Upon approval of the Remedial Design Work Plan by EPA,
18 after a reasonable opportunity for review and comment by the State,
19 WNG shall implement the Remedial Design Work Plan. WNG shall submit
20 to EPA and the State all plans, submittals and other deliverables
21 required under the Remedial Design Work Plan in accordance with the
22 Remedial Design/Remedial Action Schedule for review and approval
23 pursuant to Section XII (Submissions Requiring Agency Approval).

24 d. The preliminary design (30%) submittal shall include,
25 at a minimum, the following: (1) design criteria; (2) results of
26 treatability studies; (3) results of additional field sampling and
27 pre-design work; (4) project delivery strategy; (5) preliminary

1 plans, drawings and sketches; (6) required specifications in outline
2 form; and (7) preliminary construction schedule.

3 e. The Phase II and III intermediate (60%) design
4 submittal shall be a continuation and expansion of the preliminary
5 design. Any value engineering proposals must be identified and
6 evaluated during this review.

7 f. The pre-final (95%)/final design submittal shall
8 include, at a minimum, the project drawings and instruction
9 specifications needed to remediate the Site. The specifications that
10 will be produced will include (1) Site clearing, excavation, and
11 backfill (including control of runoff, runoff, and demolition method
12 and disposal); (2) stabilization processes; (3) asphalt paving;
13 (4) reinforcing concrete, and miscellaneous materials; (5) process
14 equipment (screens, tanks, bins, conveyors, pumps, air pollution
15 control, piping, and the like); (6) dust, erosion, and sedimentation
16 control; and (7) drainage. The drawings will provide sufficient
17 detail such that all labor, materials, tools and equipment necessary
18 for the proper execution of the contract will be clearly
19 identifiable. The drawings that will be produced will include
20 (1) overall plot plans; (2) excavation plan(s) and sections (showing
21 limits of work areas, cut and fill details, slopes, etc.);
22 (3) processing area and details (screening and processing area,
23 temporary stockpiles, water storage tank, reagent and cement storage,
24 and feed facilities) including elevations, general arrangement, and
25 necessary specialized equipment construction drawings;
26 (4) miscellaneous foundations and form construction details;
27 (5) stabilized soil cap and asphalt paving details; (6) Final grading

plan and details; (7) paved surface drainage details; (8) peripheral site drainage details; and (9) other miscellaneous drawings.

26. Remedial Action.

a. WNG shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"), which Work Plan shall be divided into two segments:

(1) The Phase I Remedial Action Working Plan shall be submitted to EPA within 55 working days of the approval of the 30% Design, and

(2) The Phase II and Phase III Remedial Action Work Plan shall be submitted to EPA within 65 working days of the approval of the Phase II and Phase III 60% Remedial Design.

The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submits the Remedial Action Work Plan, WNG shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following:

(1) the schedule for completion of the Remedial Action; (2) schedule for developing and submitting any other required Remedial Action plans; (3) a Construction Quality Assurance Plan (CQAP) and the

1 methodology for its implementation; (4) methods for satisfying
2 permitting requirements; (5) an Operation and Maintenance Plan and
3 the methodology for its implementation; (6) a Contingency Plan and
4 the methodology for its implementation; (7) a construction quality
5 control plan (by constructor); (8) procedures and plans for the
6 decontamination of equipment and disposal of contaminated materials;
7 (9) a Field Sampling Plan (directed at measuring progress toward
8 meeting Performance Standards); and (10) the tentative formulation of
9 the Remedial Action Team. The CQAPP, which shall detail the approach
10 to quality assurance during construction activities at the Site,
11 shall specify a quality assurance official ("QA Official"),
12 independent of the Supervising Contractor, to conduct a quality
13 assurance program during the construction phase of the project.

14 The Remedial Action Work Plan also shall include a schedule for
15 implementation of all Remedial Action tasks identified in the final
16 design submittal and shall identify the initial formulation of WNG's
17 Remedial Action Project Team (including, but not limited to, the
18 Supervising Contractor).

19 c. Upon approval of the Remedial Action Work Plan by EPA,
20 after a reasonable opportunity for review and comment by the State,
21 WNG shall implement the activities required under the Remedial Action
22 Work Plan. WNG shall submit to EPA and the State all plans,
23 submittals, or other deliverables required under the approved
24 Remedial Action Work Plan in accordance with the approved schedule
25 for review and approval pursuant to Section XII (Submissions
26 Requiring Agency Approval). Unless otherwise directed by EPA, WNG
27

1 shall not commence physical on-site treatment activities at the Site
2 prior to approval of the Remedial Action Work Plan.

3 27. The Work performed by WNG pursuant to this Consent Decree
4 shall include the obligation to achieve the Performance Standards
5 pursuant to the ROD and SOW.

6 28. WNG acknowledges and agrees that nothing in this Consent
7 Decree, the SOW, or the Remedial Design or Remedial Action Work Plans
8 constitutes a warranty or representation of any kind by Plaintiff
9 that compliance with the work requirements set forth in the SOW and
10 the Work Plans will achieve the Performance Standards. WNG's
11 compliance with the work requirements shall not foreclose Plaintiff
12 from seeking compliance with all terms and conditions of this Consent
13 Decree, including, but not limited to, the applicable Performance
14 Standards pursuant to the ROD and SOW.

15 29. WNG shall, prior to any off-Site shipment of Waste Material
16 from the Site to an out-of-state waste management facility, provide
17 written notification to the appropriate state environmental official
18 in the receiving facility's state and to the EPA Project Coordinator
19 of such shipment of Waste Material. However, this notification
20 requirement shall not apply to any off-Site shipments when the total
21 volume of all such shipments will not exceed 10 cubic yards.

22 a. WNG shall include in the written notification the
23 following information, where available: (1) the name and location of
24 the facility to which the Waste Material are to be shipped; (2) the
25 type and quantity of the Waste Material to be shipped; (3) the
26 expected schedule for the shipment of the Waste Material; and (4) the
27 method of transportation. WNG shall notify the state in which the

1 planned receiving facility is located of major changes in the
2 shipment plan, such as a decision to ship the Waste Material to
3 another facility within the same state, or to a facility in another
4 state.

5 b. The identity of the receiving facility and state will
6 be determined by WNG following the award of the contract for Remedial
7 Action construction. WNG shall provide the information required by
8 Paragraph 29.a as soon as practicable after the award of the contract
9 and before the Waste Material is actually shipped.

10 VII. ADDITIONAL RESPONSE ACTIONS

11 30. If it is in accordance with the Reservation of Rights
12 provisions set forth in other consent decrees entered in this action,
13 defendants in addition to WNG may be required to participate in the
14 funding or performance of additional response actions. In the event
15 that EPA determines or WNG proposes that additional response actions
16 are necessary to meet the Performance Standards or to carry out the
17 remedy consistent with the ROD, SOW, and not inconsistent with the
18 NCP, notification of such additional response actions shall be
19 provided to the Project Coordinator for the other parties.

20 31. Within 60 days of receipt of notice from EPA or WNG
21 pursuant to Paragraph 30 that such additional response actions are
22 necessary (or such longer time as may be specified by EPA), and that
23 WNG needs to conduct such additional response actions, WNG shall
24 submit for approval by EPA, after reasonable opportunity for review
25 and comment by the State, a work plan for such additional response
26 actions. The plan shall conform to the applicable requirements of
27 Paragraphs 25 and 26. Upon approval of the plan pursuant to

1 Section XII (Submissions Requiring Agency Approval), WNG shall
2 implement the plan for additional response actions in accordance with
3 the schedule contained therein.

4 32. Any additional response actions that WNG proposes are
5 necessary to meet the Performance Standards or to carry out the
6 remedy selected in the ROD and SOW shall be subject to approval by
7 EPA, after reasonable opportunity for review and comment by the
8 State, and, if authorized by EPA, shall be completed by WNG in
9 accordance with plans, specifications, and schedules approved or
10 established by EPA pursuant to Section XII (Submissions Requiring
11 Agency Approval).

12 33. WNG may invoke the procedures set forth in Section XX
13 (Dispute Resolution) to dispute EPA's determination that additional
14 response actions are necessary to meet the Performance Standards or
15 to carry out the remedy selected in the ROD and SOW. Such a dispute
16 shall be resolved pursuant to Paragraphs 77-80 of this Consent
17 Decree.

18 VIII. EPA PERIODIC REVIEW

19 34. WNG shall conduct any studies and investigations as
20 requested by EPA in order to permit EPA to conduct reviews at least
21 every five years as required by Section 121(c) of CERCLA, 42 U.S.C.
22 § 9621(c), and any applicable regulations.

23 35. If required by Sections 113(k)(2) or 117 of CERCLA,
24 42 U.S.C. § 9613(k)(2) or 9617, WNG and the public will be provided
25 with an opportunity to comment on any further response actions
26 proposed by EPA as a result of the review conducted pursuant to
27 Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written

1 comments for the record during the public comment period. After the
2 period for submission of written comments is closed, EPA will
3 determine in writing whether further response actions are
4 appropriate.

5 36. If it is in accordance with the Reservation of Rights
6 provisions set forth in other consent decrees entered in this action,
7 defendants in addition to WNG may be required to participate in the
8 funding or performance of further response actions. If EPA
9 determines that information received, in whole or in part, during the
10 review conducted pursuant to Section 121(c) of CERCLA, indicates that
11 the Remedial Action is not protective of human health and the
12 environment, WNG shall undertake such further response actions as EPA
13 has determined are appropriate, unless its liability for such further
14 response actions is barred by the Covenant Not to Sue set forth in
15 Section XXII. WNG shall submit a plan for such work to EPA for
16 approval in accordance with the procedures set forth in Section VI
17 (Performance of the Work by WNG) and shall implement the plan
18 approved by EPA. WNG may invoke the procedures set forth in
19 Section XX (Dispute Resolution) to dispute (a) EPA's determination
20 that the remedial action is not protective of human health and the
21 environment, (b) EPA's selection of the further response actions
22 ordered as arbitrary and capricious or otherwise not in accordance
23 with law, (c) EPA's determination that WNG's liability for the
24 further response actions requested is reserved in Paragraphs 95, 96
25 or 98 or otherwise not barred by the Covenant Not to Sue set forth in
26 Section XXII or (d) EPA's determination regarding the amount of
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1 payments required from WNG and other defendants to implement further
2 response actions.

3 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

4 37. WNG shall use quality assurance, quality control, and chain
5 of custody procedures for all treatability, design, compliance and
6 monitoring samples in accordance with EPA's "Interim Guidelines and
7 Specifications For Preparing Quality Assurance Project Plans,"
8 December 1980, (QAMS-005/80); "Data Quality Objective Guidance,"
9 (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual,"
10 May 1978, revised November 1984, (EPA 330/9-78-001-R); and any
11 subsequent amendment to such guidelines upon notification by EPA to
12 WNG of such amendment. Amended guidelines shall apply only to
13 procedures conducted after such notification. Prior to the
14 commencement of any monitoring project under this Consent Decree, WNG
15 shall submit to EPA for approval, after a reasonable opportunity for
16 review and comment by the State, a Quality Assurance Project Plan
17 ("QAPP") to EPA and the State that is consistent with the SOW and the
18 NCP. If relevant to the proceeding, the Parties agree that validated
19 sampling data generated in accordance with the QAPP and reviewed and
20 approved by EPA shall be admissible as evidence, without objection,
21 in any proceeding under this Decree. WNG shall ensure that EPA and
22 State personnel and their authorized representatives are allowed
23 access at reasonable times to all laboratories utilized by WNG in
24 implementing this Consent Decree. In addition, WNG shall ensure that
25 such laboratories shall analyze all samples submitted by EPA pursuant
26 to the QAPP for quality assurance monitoring. WNG shall ensure that
27 the laboratories it utilizes for the analysis of samples taken

1 pursuant to this Decree perform all analyses according to accepted
2 EPA methods or other methods agreed to by EPA and WNG. Accepted EPA
3 methods consist of those methods which are documented in the
4 "Contract Lab Program Statement of Work for Inorganic Analysis" and
5 the "Contract Lab Program Statement of Work for Organic Analysis,"
6 dated February 1988, and any amendments made thereto during the
7 course of the implementation of this Decree. WNG shall ensure that
8 all laboratories they use for analysis of samples taken pursuant to
9 this Consent Decree participate in an EPA or EPA-equivalent QA/QC
10 program.

11 38. Upon request, WNG shall allow split or duplicate samples to
12 be taken by EPA and the State or their authorized representatives.
13 WNG shall notify EPA and the State not less than 7 days in advance of
14 any sample collection activity unless shorter notice is agreed to by
15 EPA. In addition, EPA and the State shall have the right to take any
16 additional samples that EPA or the State deem necessary. Upon
17 request, EPA and the State shall allow WNG to take split or duplicate
18 samples of any samples it takes as part of the Plaintiff's oversight
19 of WNG's implementation of the Work.

20 39. WNG shall submit to EPA and the State copies of the results
21 of all sampling and/or tests or other data obtained or generated by
22 or on behalf of WNG with respect to the Site and/or the
23 implementation of this Consent Decree unless EPA agrees otherwise.

24 40. Notwithstanding any provision of this Consent Decree, the
25 United States and the State hereby retains all of its information
26 gathering and inspection authorities and rights, including
27

1 enforcement actions related thereto, under CERCLA, RCRA and any other
2 applicable statutes or regulations.

3 X. ACCESS

4 41. Commencing upon the date of lodging of this Consent Decree,
5 WNG consents to access to its property, and the United States, the
6 State, and their representatives, including EPA and its contractors,
7 shall be authorized to enter such property at all reasonable times
8 for the purposes of conducting any activity related to this Consent
9 Decree, the ROD, or any other response action, including, but not
10 limited to:

- 11 a. Monitoring the Work;
- 12 b. Verifying any data or information submitted to the
13 United States;
- 14 c. Conducting investigations relating to contamination at
15 or near the Site;
- 16 d. Obtaining samples;
- 17 e. Assessing the need for, planning, or implementing
18 additional response actions at or near the Site;
- 19 f. Inspecting and copying records, operating logs,
20 contracts, or other documents maintained or generated by WNG or its
21 agents, consistent with Section XXV;
- 22 g. Assessing WNG's compliance with this Consent Decree;
23 and
- 24 h. Implementing or overseeing any response actions at the
25 Site.

26 42. EPA represents that access for WNG and its Contractors, as
27 is necessary to perform the Work under this Consent Decree, has been

secured pursuant to consent decrees entered in this action between the United States and certain landowner defendants (Joseph Simon & Sons, Inc., Hygrade Food Products Corporation, Larry Hanson, John Simchuck, City of Tacoma, Burlington Northern Railroad Corporation, and Union Pacific Railroad Corporation). To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned by persons other than WNG and such landowner defendants, WNG shall use best efforts to secure from such persons access for WNG, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. WNG agrees to execute access agreements with Burlington Northern Railroad Company and Union Pacific Railroad Company in the form of Appendices D and E, respectively. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies WNG in writing that additional access beyond that previously secured is necessary, WNG shall promptly notify the United States, and shall include in that notification a summary of the steps WNG has taken to attempt to obtain access. The United States or the State may, as it deems appropriate, assist WNG in obtaining access. WNG shall reimburse the United States or the State, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

1 43. Notwithstanding any provision of this Consent Decree, the
2 United States and the State retain all of their access authorities
3 and rights, including enforcement authorities related thereto, under
4 CERCLA, RCRA and any other applicable statute or regulations.

5 44. In order to minimize disruption to the business operations
6 of Joseph Simon & Sons, Inc. ("Simon"), WNG's obligations shall be to
7 advise Simon of any need to have access to Simon's property outside
8 of normal hours of business operations, and to inform Simon in
9 advance of gaining access to or engaging in response actions on
10 Simon's property. WNG shall consult with Simon in designing or
11 planning Site remediation and shall provide Simon with information
12 regarding proposed or prospective remedial design or remedial action
13 which impact Simon's business operations at the Site.

14 XI. REPORTING REQUIREMENTS

15 45. WNG shall submit to EPA and the State written monthly
16 progress reports that: (a) describe the actions which have been taken
17 toward achieving compliance with this Consent Decree during the
18 previous month; (b) include a summary of all results of sampling and
19 tests and all other data received or generated by WNG or its
20 contractors or agents in the previous month; (c) identify all work
21 plans, plans and other deliverables required by this Consent Decree
22 completed and submitted during the previous month; (d) describe all
23 actions, including, but not limited to, data collection and
24 implementation of work plans, which are scheduled for the next six
25 weeks and provide other information relating to the progress of
26 construction, including, but not limited to, critical path diagrams,
27 Gantt charts and Pert charts; (e) include information regarding

percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that WNG has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. WNG shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies WNG pursuant to Paragraph 63.b of Section XV (Certification of Completion). If requested by EPA or the State, WNG shall also provide briefings for EPA and the State to discuss the progress of the Work.

46. WNG shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the scheduled date for performance of the activity or within two days (48 hours) after learning of a schedule change, if such change occurs less than seven days prior to its scheduled date for performance.

47. Upon the occurrence of any event during performance of the Work that WNG is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), WNG shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA

Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 10, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

48. Within 20 days of the onset of such an event, WNG shall furnish to EPA a written report, signed by WNG's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, WNG shall submit a report setting forth all actions taken in response thereto.

49. WNG shall submit four copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. WNG shall submit two copies of all such plans, reports and data to the EPA representative designated by the EPA Project Coordinator.

50. All reports and other documents submitted by WNG to EPA (other than the monthly progress reports referred to above) which purport to document WNG's compliance with the terms of this Consent Decree shall be signed by an authorized representative of WNG.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

51. Pursuant to the Remedial Design/Remedial Action Schedule, EPA agrees to review any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree within the number of days specified in the Schedule. EPA, after reasonable opportunity for concurrent review and comment by the State, shall:

(a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that WNG modify the submission; or (e) any combination of the above.

52. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 51(a), (b), or (c), WNG shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 51(c) or WNG's submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI.

53. a. Upon receipt of a notice of disapproval pursuant to Paragraph 51(d), WNG shall, within 15 working days or such other reasonable time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 15 working-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 54.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 51(d), WNG shall proceed, at the direction of EPA, to take any action required by any nondeficient portion of the

1 submission. Implementation of any nondeficient portion of a
2 submission shall not relieve WNG of any liability for stipulated
3 penalties under Section XXI (Stipulated Penalties).

4 54. In the event that a resubmitted plan, report or other item,
5 or portion thereof, is disapproved by EPA, EPA may again require WNG
6 to correct the deficiencies, in accordance with the preceding
7 Paragraphs. EPA also retains the right to amend or develop the plan,
8 report or other item. WNG shall implement any such plan, report, or
9 item as amended or developed by EPA, subject only to their right to
10 invoke the procedures set forth in Section XX (Dispute Resolution).

11 55. If upon resubmission, a plan, report, or item is
12 disapproved or modified by EPA due to a material defect, WNG shall be
13 deemed to have failed to submit such plan, report, or item timely and
14 adequately unless WNG invokes the dispute resolution procedures set
15 forth in Section XX (Dispute Resolution) and EPA's action is
16 overturned pursuant to that Section. The provisions of Section XX
17 (Dispute Resolution) and Section XXI (Stipulated Penalties) shall
18 govern the implementation of the Work and accrual and payment of any
19 stipulated penalties during Dispute Resolution. If EPA's disapproval
20 or modification is upheld, EPA may seek stipulated penalties that
21 shall accrue for such violation from the date on which the initial
22 submission was originally required, as provided in Section XXI.

23 56. All plans, reports, and other items required to be
24 submitted to EPA under this Consent Decree shall, upon approval or
25 modification by EPA, be enforceable under this Consent Decree. In
26 the event EPA approves or modifies a portion of a plan, report, or
27 other item required to be submitted to EPA under this Consent Decree,

1 the approved or modified portion shall be enforceable under this
2 Consent Decree.

3 XIII. PROJECT COORDINATORS

4 57. Within 20 days of lodging this Consent Decree, WNG, the
5 State and EPA will notify each other, in writing, of the name,
6 address and telephone number of their respective designated Project
7 Coordinators and Alternate Project Coordinators. If a Project
8 Coordinator or Alternate Project Coordinator initially designated is
9 changed, the identity of the successor will be given to the other
10 parties at least 5 working days before the changes occur, unless
11 impracticable, but in no event later than the actual day the change
12 is made. WNG's Project Coordinators shall be subject to disapproval
13 by EPA and shall have the technical expertise sufficient to
14 adequately oversee all aspects of the Work. WNG's Project
15 Coordinator shall not be an attorney in this matter. He or she may
16 assign other representatives, including other contractors, to serve
17 as a Site representative for oversight of performance of daily
18 operations during remedial activities.

19 58. Plaintiff may designate other representatives, including,
20 but not limited to, EPA and State employees, and federal and State
21 contractors and consultants, to observe and monitor the progress of
22 any activity undertaken pursuant to this Consent Decree. EPA's
23 Project Coordinator and Alternate Project Coordinator shall have the
24 authority lawfully vested in a Remedial Project Manager (RPM) and an
25 On-Scene Coordinator (OSC) by the National Contingency Plan,
26 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or
27 Alternate Project Coordinator shall have authority, consistent with

1 the National Contingency Plan, to halt any Work required by this
2 Consent Decree and to take any necessary response action when s/he
3 determines that conditions at the Site constitute an emergency
4 situation or may present an immediate threat to public health or
5 welfare or the environment due to release or threatened release of
6 Waste Material.

7 59. EPA's Project Coordinator and WNG's Project Coordinator
8 will meet periodically, as requested by the EPA Project Coordinator.

9 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

10 60. Within 30 days of entry of this Consent Decree, WNG shall
11 establish and maintain financial security in the amount of \$500,000
12 in one of the following forms:

- 13 a. A surety bond guaranteeing performance of the Work;
- 14 b. One or more irrevocable letters of credit equalling
15 the total estimated cost of the Work;
- 16 c. A trust fund;
- 17 d. A guarantee to perform the Work by one or more parent
18 corporations or subsidiaries, or by one or more unrelated
19 corporations that have a substantial business relationship with WNG;
20 or
- 21 e. A demonstration that WNG satisfies the requirements of
22 40 C.F.R. Part 264.143(f).

23 61. If WNG seeks to demonstrate the ability to complete the
24 Work through a guarantee by a third party pursuant to Paragraph 60(d)
25 of this Consent Decree, WNG shall demonstrate that the guarantor
26 satisfies the requirements of 40 C.F.R. Part 264.143(f). If WNG seek
27 to demonstrate their ability to complete the Work by means of the

financial test or the corporate guarantee pursuant to Paragraph 60(d) or (e), WNG shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, WNG shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 60 of this Consent Decree. WNG 's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

62. Completion of the Remedial Action

a. Within 90 days after WNG concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, WNG shall schedule and conduct a pre-certification inspection to be attended by EPA. The State may attend such pre-certification inspection. If, after the pre-certification inspection, WNG still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, WNG shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and WNG's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this

1 financial test or the corporate guarantee pursuant to Paragraph 60(d)
2 or (e), WNG shall resubmit sworn statements conveying the information
3 required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of
4 the effective date of this Consent Decree. In the event that EPA,
5 after a reasonable opportunity for review and comment by the State,
6 determines at any time that the financial assurances provided
7 pursuant to this Section are inadequate, WNG shall, within 30 days of
8 receipt of notice of EPA's determination, obtain and present to EPA
9 for approval one of the other forms of financial assurance listed in
10 Paragraph 60 of this Consent Decree. WNG 's inability to demonstrate
11 financial ability to complete the Work shall not excuse performance
12 of any activities required under this Consent Decree.

13 XV. CERTIFICATION OF COMPLETION

14 62. Completion of the Remedial Action

15 a. Within 90 days after WNG concludes that the Remedial
16 Action has been fully performed and the Performance Standards have
17 been attained, WNG shall schedule and conduct a pre-certification
18 inspection to be attended by EPA. The State may attend such
19 pre-certification inspection. If, after the pre-certification
20 inspection, WNG still believes that the Remedial Action has been
21 fully performed and the Performance Standards have been attained, WNG
22 shall submit a written report requesting certification to EPA for
23 approval, with a copy to the State, pursuant to Section XII
24 (Submissions Requiring Agency Approval) within 30 days of the
25 inspection. In the report, a registered professional engineer and
26 WNG's Project Coordinator shall state that the Remedial Action has
27 been completed in full satisfaction of the requirements of this

1 Consent Decree. The written report shall include as-built drawings
2 signed and stamped by a professional engineer. The report shall
3 contain the following statement, signed by a responsible corporate
4 official of WNG or WNG's Project Coordinator:

5 To the best of my knowledge, after thorough
6 investigation, I certify that the information
7 contained in or accompanying this submission is
8 true, accurate and complete. I am aware that
 there are significant penalties for submitting
 false information, including the possibility of
 fine and imprisonment for knowing violations.

9 If, after completion of the pre-certification inspection and receipt
10 and review of the written report, EPA, after reasonable opportunity
11 to review and comment by the State, determines that the Remedial
12 Action or any portion thereof has not been completed in accordance
13 with this Consent Decree or that the Performance Standards have not
14 been achieved, EPA will notify WNG in writing of the activities that
15 must be undertaken to complete the Remedial Action and achieve the
16 Performance Standards. EPA will set forth in the notice a schedule
17 for performance of such activities consistent with the Consent Decree
18 and the SOW or require WNG to submit a schedule to EPA for approval
19 pursuant to Section XII (Submissions Requiring Agency Approval). WNG
20 shall perform all activities described in the notice in accordance
21 with the specifications and schedules established pursuant to this
22 Paragraph, subject to their right to invoke the dispute resolution
23 procedures set forth in Section XX (Dispute Resolution).

24 b. If EPA concludes, based on the initial or any
25 subsequent report requesting Certification of Completion and after a
26 reasonable opportunity for review and comment by the State, that the
27 Remedial Action has been fully performed in accordance with this

1 Consent Decree and that the Performance Standards have been achieved,
2 EPA will so certify in writing to WNG. This certification shall
3 constitute the Certification of Completion of the Remedial Action for
4 purposes of this Consent Decree, including, but not limited to,
5 Section XXII (Covenants Not to Sue by Plaintiff). Certification of
6 Completion of the Remedial Action shall not affect WNG's other
7 obligations under this Consent Decree.

8 63. Completion of the Work

9 a. Within 90 days after WNG concludes that all phases of
10 the Work (including O & M), have been fully performed, WNG shall
11 schedule and conduct a pre-certification inspection to be attended by
12 WNG, and EPA. The State may attend such pre-certification
13 inspection. If, after the pre-certification inspection, WNG still
14 believes that the Work has been fully performed, WNG shall submit a
15 written report by a registered professional engineer stating that the
16 Work has been completed in full satisfaction of the requirements of
17 this Consent Decree. The report shall contain the following
18 statement, signed by a responsible corporate official of WNG or WNG's
19 Project Coordinator:

20 To the best of my knowledge, after thorough
21 investigation, I certify that the information
22 contained in or accompanying this submission is
23 true, accurate and complete. I am aware that
there are significant penalties for submitting
false information, including the possibility of
fine and imprisonment for knowing violations.

24 If, after review of the written report, EPA, after reasonable
25 opportunity to review and comment by the State, determines that any
26 portion of the Work has not been completed in accordance with this
27 Consent Decree, EPA will notify WNG in writing of the activities that

1 must be undertaken to complete the Work. EPA will set forth in the
2 notice a schedule for performance of such activities consistent with
3 the Consent Decree and the SOW or require WNG to submit a schedule to
4 EPA for approval pursuant to Section XII (Submissions Requiring
5 Agency Approval). WNG shall perform all activities described in the
6 notice in accordance with the specifications and schedules
7 established therein, subject to their right to invoke the dispute
8 resolution procedures set forth in Section XX (Dispute Resolution).

9 b. If EPA concludes, based on the initial or any
10 subsequent request for Certification of Completion by WNG and after a
11 reasonable opportunity for review and comment by the State, that the
12 Work has been fully performed in accordance with this Consent Decree,
13 EPA will so notify WNG in writing.

14 XVI. EMERGENCY RESPONSE

15 64. In the event of any action or occurrence during the
16 performance of the Work which causes or threatens a release of Waste
17 Material from the Site that constitutes an emergency situation or may
18 present an immediate threat to public health or welfare or the
19 environment, WNG shall, subject to Paragraph 65, immediately take all
20 appropriate action to prevent, abate, or minimize such release or
21 threat of release, and shall immediately notify the EPA's Project
22 Coordinator, or, if the Project Coordinator is unavailable, EPA's
23 Alternate Project Coordinator. If neither of these persons is
24 available, WNG shall notify EPA. WNG shall take such actions in
25 consultation with EPA's Project Coordinator or other available
26 authorized EPA officer and in accordance with all applicable
27 provisions of the Health and Safety Plans, the Contingency Plans, and

any other applicable plans or documents developed pursuant to the SOW. In the event that WNG fails to take appropriate response action as required by this Section, and EPA takes such action instead, WNG shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

65. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS AND SECTION 106(b) PAYMENT

66. To the extent that the United States incurs Future Response Costs which are not fully reimbursed as a result of payments made pursuant to other consent decrees entered in this action, WNG shall reimburse the United States for such Future Response Costs incurred not inconsistent with the National Contingency Plan. The United States agrees to send WNG a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes descriptions of direct and indirect costs incurred by EPA, DOJ and their contractors on a monthly basis. WNG shall make all payments within 30 days of WNG's receipt of each bill requiring payment, except as otherwise provided in Paragraph 68.

67. WNG shall make all payments required by Paragraph 66 in the form of a certified check made payable to "EPA Hazardous Substance Superfund," and referencing DOJ Case Number 90-11-3-307. WNG shall

forward the certified check(s) to Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251, and shall forward copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions). Within thirty days of entry of this Consent Decree, WNG shall pay \$450,000 for settlement of the penalty claim of the United States asserted in this matter pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). The payment shall be made by certified check payable to "EPA Hazardous Substance Superfund," and forwarded to Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251. A copy of the check and transmittal letter shall be forwarded to the United States as specified in Section XXVII (Notices and Submissions).

68. WNG may contest payment of any Future Response Costs under Paragraph 66 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are either inconsistent with the definition of "Future Response Costs" or with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and receipt of documentation, as is provided to WNG, pursuant to Paragraphs 19(c) and 66, and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, WNG shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraphs 66 and 67. Simultaneously, WNG shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of

Washington and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. WNG shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, WNG shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, WNG shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 67. If WNG prevails concerning any aspect of the contested costs, WNG shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 67; WNG shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding WNG's obligation to reimburse the United States for its Future Response Costs.

69. In the event that the payments required by Paragraph 66 are not made within 30 days of WNG's receipt of a bill, WNG shall pay interest on the unpaid balance at the rate established pursuant to

Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Future Response Costs shall begin to accrue on the date of WNG's receipt of a bill. Interest shall accrue at the rate specified through the date of WNG's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of WNG's failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

70. The United States does not assume any liability by entering into this agreement or by virtue of any designation of WNG as EPA's authorized representatives under Section 104(e) of CERCLA. WNG shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of WNG, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of WNG as EPA's authorized representatives under Section 104(e) of CERCLA. Further, WNG agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of WNG, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree.

1 The United States shall not be held out as a party to any contract
2 entered into by or on behalf of WNG in carrying out activities
3 pursuant to this Consent Decree. Neither WNG nor any such contractor
4 shall be considered an agent of the United States or the State.

5 71. WNG waives all claims against the United States for damages
6 or reimbursement or for set-off of any payments made or to be made to
7 the United States, arising from or on account of any contract,
8 agreement, or arrangement between WNG and any person for performance
9 of Work on or relating to the Site, including, but not limited to,
10 claims on account of construction delays. In addition, WNG shall
11 indemnify and hold harmless the United States and the State with
12 respect to any and all claims for damages or reimbursement arising
13 from or on account of any contract, agreement, or arrangement between
14 WNG and any person for performance of Work on or relating to the
15 Site, including, but not limited to, claims on account of
16 construction delays.

17 72. No later than 15 days before commencing any on-site Work,
18 WNG shall secure, and shall maintain until the first anniversary of
19 EPA's Certification of Completion of the Remedial Action pursuant to
20 Paragraph 62.b. of Section XV (Certification of Completion)
21 comprehensive general liability insurance and automobile insurance
22 with limits of one million dollars, combined single limit naming as
23 additional insured the United States. In addition, for the duration
24 of this Consent Decree, WNG shall satisfy, or shall ensure that their
25 contractors or subcontractors satisfy, all applicable laws and
26 regulations regarding the provision of worker's compensation
27 insurance for all persons performing the Work on behalf of WNG in

furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, WNG shall provide to EPA certificates of such insurance and a copy of each insurance policy. WNG shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If WNG demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, WNG need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

73. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of WNG or of any entity controlled by WNG, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite WNG's best efforts to fulfill the obligation. The requirement that WNG exercise "best efforts to fulfill the obligation" includes using best efforts to avoid any potential force majeure event and to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" includes events caused by or resulting from Simon's objection in writing to a response action, as provided under Paragraph 24 of the consent decree for settlement between the United States of America and Joseph Simon & Sons, Inc., or EPA's failure to respond to a plan,

1 report or other item as provided in Paragraph 51. "Force Majeure"
2 does not include WNG's financial inability to complete the Work or a
3 failure to attain the Performance Standards.

4 74. If any event occurs or has occurred that may delay the
5 performance of any obligation under this Consent Decree, whether or
6 not caused by a force majeure event, WNG shall orally notify EPA's
7 Project Coordinator by telephone or, in his or her absence, EPA's
8 Alternate Project Coordinator or, in the event both of EPA's
9 designated representatives are unavailable, the Director of the
10 Hazardous Waste Management Division, EPA Region 10, within 48 hours
11 of when WNG first knew that the event would cause a delay. Within
12 5 working days thereafter, WNG shall provide in writing to EPA and
13 the State an explanation and description of the reasons for the
14 delay; the anticipated duration of the delay; all actions taken or to
15 be taken to prevent or minimize the delay; a schedule for
16 implementation of any measures to be taken to prevent or mitigate the
17 delay or the effect of the delay; WNG's rationale for attributing
18 such delay to a force majeure event if it intends to assert such a
19 claim; and a statement as to whether, in the opinion of WNG, such
20 event may cause or contribute to an endangerment to public health,
21 welfare or the environment. WNG shall include with any notice all
22 available documentation supporting its claim that the delay was
23 attributable to a force majeure. Failure to comply with the above
24 requirements shall preclude WNG from asserting any claim of force
25 majeure for that event. WNG shall be deemed to have notice of any
26 circumstance of which their contractors had notice.

75. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation except those obligations, the performance of which is dependent upon prior performance of the delayed obligation or action. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify WNG in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify WNG in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

76. If WNG elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, WNG shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that WNG complied with the requirements of Paragraphs 74 and 75 above. If WNG carries this burden, the delay at issue shall be deemed not to be a violation by WNG of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

77. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of WNG that have not been disputed in accordance with this Section.

78. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

79. a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, WNG invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by WNG. The Statement of Position shall specify WNG's position as to whether formal dispute resolution should proceed under Paragraph 80 or 81.

b. Within fourteen (14) days after receipt of WNG's Statement of Position, EPA will serve on WNG its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 80 or 81.

c. If there is disagreement between EPA and WNG as to whether dispute resolution should proceed under Paragraph 80 or 81, the parties shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if WNG ultimately appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 80 and 81.

80. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by WNG regarding the validity of the ROD.

1 a. An administrative record of the dispute shall be
2 maintained by EPA and shall contain all statements of position,
3 including supporting documentation, submitted pursuant to this
4 Paragraph. Where appropriate, EPA may allow submission of
5 supplemental statements of position by the parties to the dispute.

6 b. The Director of the Waste Management Division, EPA
7 Region 10, will issue a final administrative decision resolving the
8 dispute based on the administrative record described in
9 Paragraph 80.a. This decision shall be binding upon WNG, subject
10 only to the right to seek judicial review pursuant to Paragraph 80.c."
11 and d.

12 c. Any administrative decision made by EPA pursuant to
13 Paragraph 80.b. shall be reviewable by this Court, provided that a
14 notice of judicial appeal is filed by WNG with the Court and served
15 on the United States within 30 days of receipt of EPA's decision.
16 The notice of judicial appeal shall include a description of the
17 matter in dispute, the efforts made by the Parties to resolve it, the
18 relief requested, and the schedule, if any, within which the dispute
19 must be resolved to ensure orderly implementation of this Consent
20 Decree. The United States may file a response to WNG's notice of
21 judicial appeal.

22 d. In proceedings on any dispute governed by this
23 Paragraph, WNG shall have the burden of demonstrating that the
24 decision of the Waste Management Division Director is arbitrary and
25 capricious or otherwise not in accordance with law. Judicial review
26 of EPA's decision shall be on the administrative record compiled
27 pursuant to Paragraph 80.a.

81. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of WNG's Statement of Position submitted pursuant to Paragraph 79, the Director of the Waste Management Division, EPA Region 10, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on WNG unless, within 30 days of receipt of the decision, WNG files with the Court and serves on the United States a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to WNG's notice of judicial appeal.

b. Notwithstanding Paragraph 13 of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

82. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of WNG under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 91. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance

1 with any applicable provision of this Consent Decree. In the event
2 that WNG does not prevail on the disputed issue, stipulated penalties
3 may be assessed and paid as provided in Section XXI (Stipulated
4 Penalties).

5 XXI. STIPULATED PENALTIES

6 83. WNG shall be liable for stipulated penalties in the amounts
7 set forth in Paragraphs 84 and 85 to the United States for failure to
8 comply with the requirements of this Consent Decree specified below,
9 unless excused under Section XIX (Force Majeure). "Compliance" by
10 WNG shall include completion of the activities under this Consent
11 Decree or any work plan or other plan approved under this Consent
12 Decree identified below in accordance with all applicable
13 requirements of law, this Consent Decree, the SOW, and any plans or
14 other documents approved by EPA pursuant to this Consent Decree and
15 within the specified time schedules established by and approved under
16 this Consent Decree.

17 84. a. The following stipulated penalties may be payable per
18 violation per working day to the United States for any noncompliance
19 identified in Subparagraph b:

<u>Penalty Per Violation</u> <u>Per Working Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 750	15th through 30th day
\$1,000	31st day and beyond

23 b. For failure to submit to EPA for approval the
24 following items in accordance with the Remedial Design/Remedial
25 Action Schedule and otherwise comply with Section XII with respect to
26 these items:
27

- 1) Remedial Design 30%
- 2) Phase I Remedial Action Work Plan
- 3) Phase I Final Design
- 4) Phase II & III Remedial Design 60%
- 5) Phase II & III Final Design
- 6) failure to complete stabilization and asphalt cover work described in Final Remedial Design by December 31, 1994.

c. In the event any penalties accrue under Paragraph 84(b)(1), (2), (3), (4) or (5), WNG shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the penalty. WNG shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested penalty, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If WNG completes Phase I Construction in accordance with the Remedial Design/Remedial Action Schedule, no penalty shall be owed to the United States for items 84(b)(1), (2) and (3) and any monies plus accrued interest held in escrow for payment of penalties under Paragraph 84(b)(1), (2) or (3) shall be returned to WNG. If WNG completes Phase II & III stabilization and capping in accordance with the Remedial Design/Remedial Action Schedule, no penalties shall be owed to the United States for items 84(b)(4) and (5) and any monies

held in escrow plus accrued interest shall be returned to WNG. Any accrued penalties and interest under Paragraph 84 that are not excused by this Paragraph shall be paid to the United States in accordance with Paragraph 89.

85. The following stipulated penalties shall be payable per violation per working day to the United States for any noncompliance identified in Subparagraph (b):

<u>Penalty Per Violation Per Working Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 1,500	15th through 30th day
\$ 3,000	31st day and beyond

b. For failure to initiate the activities identified below within the corresponding time frame:

<u>Activity</u>	<u>Time Frame to Initiate Activity</u>
1) Phase I Construction Begins	May 15, 1992, or 20 working days following the date of EPA's response to Phase I 95% design, whichever is later
2) Phase I - Begin Excavation	July 14, 1992, or 10 working days following EPA's approval of Phase I Remedial Design, whichever is later
3) Phase II - Construction Begins	June 2, 1993, or 35 working days following EPA's approval of Phase II Remedial Design, whichever is later
4) Phase II - Begin Excavation	August 16, 1992, or 55 working days following start of Phase II Construction, whichever is later
5) Phase III - Construction Begins	June 2, 1993, or 35 working days following EPA's approval of Phase III Remedial Design, whichever is later

6) Phase III - Begin
Excavation of Fluff

July 1, 1993, or 25 working
days following start of
Phase III Construction,
whichever is later

7) Place Asphalt Cover Over
Stabilized Material

60 days following the
placement of last stabilized
material during each
construction season

86. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 99 of Section XXII (Covenants Not to Sue by Plaintiffs), WNG shall be liable for a stipulated penalty in the amount of \$25,000 if EPA assumes performance of a portion of the Work and \$100,000 if EPA completes performance of the balance of the remaining Work.

87. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

88. Within 30 days following EPA's determination that WNG has failed to comply with a requirement of this Consent Decree, EPA will provide WNG written notification of the same and describe the noncompliance. EPA will also provide WNG a written demand for the payment of the penalties.

89. Except as provided in Paragraph 84(c), all penalties owed to the United States under this Section shall be due and payable within 30 days of WNG's receipt from EPA of a written demand for payment of the penalties, unless WNG invokes the Dispute Resolution

procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251, and shall reference DOJ Case Number 90-11-3-307. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

90. The payment of penalties shall not alter in any way WNG's obligation to complete the performance of the Work required under this Consent Decree.

91. Penalties shall continue to accrue as provided in Paragraph 88 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails, WNG shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by WNG, WNG shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order.

Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to WNG to the extent that it prevails.

92. a. If WNG fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. WNG shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 90 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of WNG's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

93. No penalty payments made under this Section shall be tax deductible for Federal purposes.

XXII. COVENANT NOT TO SUE BY PLAINTIFF

94. In consideration of the actions that will be performed and the payments that will be made by WNG under the terms of the Consent Decree, and except as specifically provided in Paragraphs 95, 96, and 98 of this Section, the United States covenants not to sue or to take administrative action against WNG pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, this covenant not to sue shall take

1 effect upon entry of the Consent Decree. With respect to future
2 liability, this covenant not to sue shall take effect upon
3 Certification of Completion of Remedial Action by EPA pursuant to
4 Paragraph 62.b of Section XV (Certification of Completion). This
5 covenant not to sue is conditioned upon the complete and satisfactory
6 performance by WNG of its obligations under this Consent Decree.
7 This covenant not to sue extends only to WNG. The Parties
8 acknowledge that the Consent Decree with Joseph Simon & Sons, Inc.
9 ("Simon"), lodged with this Court on September 11, 1991, if approved,
10 reserves the United States' right to proceed against Simon for any
11 liability resulting from a failure by Simon to exercise due care with
12 respect to hazardous substances at the Site. Without in any way
13 limiting the prosecutorial discretion of the United States, the
14 United States will consider proceeding against Simon for any Response
15 Costs caused by a failure by Simon to exercise due care with respect
16 to such hazardous substances.

17 95. United States' Pre-certification reservations.

18 Notwithstanding any other provision of this Consent Decree, the
19 United States reserves, and this Consent Decree is without prejudice
20 to, the right to institute proceedings in this action or in a new
21 action, or to issue an administrative order seeking to compel WNG
22 (a) to perform further response actions relating to the Site or
23 (b) to reimburse the United States for additional costs of response
24 if, prior to certification of completion of the Remedial Action:

- 25 (i) conditions at the Site, previously unknown to EPA, are
26 discovered, or
27

(ii) information, previously unknown to EPA, is received,
in whole or in part,
and these previously unknown conditions or information together with
any other relevant information indicates that the Remedial Action is
not protective of human health or the environment. If it is in
accordance with the Reservation of Rights provisions set forth in
other consent decrees entered in this action, defendants in addition
to WNG may be required to participate in the funding or performance
of further response actions.

96. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the
United States reserves, and this Consent Decree is without prejudice
to, the right to institute proceedings in this action or in a new
action, or to issue an administrative order seeking to compel WNG
(a) to perform further response actions relating to the Site or
(b) to reimburse the United States for additional costs of response
if, subsequent to certification of completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are
discovered, or

(ii) information, previously unknown to EPA, is received,
in whole or in part,

and these previously unknown conditions or this information together
with other relevant information indicate that the Remedial Action is
not protective of human health or the environment. If it is in
accordance with the Reservation of Rights provisions set forth in
other consent decrees entered in this action, defendants in addition

1 to WNG may be required to participate in the funding or performance
2 of further response actions.

3 97. For purposes of Paragraph 95, the information and the
4 conditions known to EPA shall include only that information and those
5 conditions set forth in the Record of Decision for the Site, the
6 administrative record supporting the Record of Decision and the
7 administrative record regarding the Site, including information
8 generated since the date the Record of Decision was issued and
9 received by EPA prior to entry of this Consent Decree. For purposes
10 of Paragraph 96, the information and the conditions known to EPA
11 shall include only that information and those conditions set forth in
12 the Record of Decision, the administrative record supporting the
13 Record of Decision, and any information received by EPA pursuant to
14 the Administrative Order dated September 30, 1988, as amended and
15 pursuant to requirements of this Consent Decree received by EPA prior
16 to Certification of Completion of the Remedial Action.

17 98. General reservations of rights. The covenant not to sue
18 set forth above does not pertain to any matters other than those
19 expressly specified in Paragraph 94. The United States reserves, and
20 this Consent Decree is without prejudice to, all rights against WNG
21 with respect to all other matters, including but not limited to, the
22 following:

23 (a) claims based on a failure by WNG to meet a requirement
24 of this Consent Decree;

25 (b) liability arising from the past, present, or future
26 disposal, release, or threat of release of Waste Materials
27 outside of the Site;

(c) liability for damages resulting from, and reasonable costs of assessing, injury to, destruction of, or loss of natural resources;

(d) criminal liability; and

(e) liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

99. In the event EPA determines that WNG has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. WNG may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that WNG failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that WNG shall pay pursuant to Section XVII (Reimbursement of Response Costs).

100. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law and WNG retains all rights and privileges, including those granted by the Constitution of the United States and by statute, unless explicitly waived herein.

XXIII. COVENANTS BY WNG

101. WNG hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to,

any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, WNG reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of WNG plans or activities) that are brought upon any basis other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

102. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

1 103. With regard to claims for contribution against WNG for
2 matters addressed in this Consent Decree, the Parties hereto agree
3 that WNG is entitled to such protection from contribution actions or
4 claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C.
5 § 9613(f)(2).

6 104. WNG agrees that with respect to any suit or claim for
7 contribution brought by it for matters related to this Consent
8 Decree, WNG will notify the United States in writing no later than 60
9 days prior to the initiation of such suit or claim.

10 105. WNG also agrees that with respect to any suit or claim for
11 contribution brought against it for matters related to this Consent
12 Decree, WNG will notify in writing the United States within 10 days
13 of service of the complaint on it. In addition, WNG shall notify the
14 United States within 10 days of service or receipt of any Motion for
15 Summary Judgment and within 10 days of receipt of any order from a
16 court setting a case for trial.

17 106. In any subsequent administrative or judicial proceeding
18 initiated by the United States for injunctive relief, recovery of
19 response costs, or other appropriate relief relating to the Site, WNG
20 shall not assert against the United States, and may not maintain, any
21 defense or claim based upon the principles of waiver, res judicata,
22 collateral estoppel, issue preclusion, claimsplitting, or other
23 defenses based upon any contention that the claims raised by the
24 United States in the subsequent proceeding were or should have been
25 brought in the instant case; provided, however, that nothing in this
26 Paragraph supersedes or affects the enforceability of the covenant
27

1 not to sue set forth in Section XXII (Covenant Not to Sue by
2 Plaintiff).

3 XXV. ACCESS TO INFORMATION

4 107. WNG shall provide to EPA, upon request, copies of all
5 documents and information within its possession or control or that of
6 its contractors or agents relating to activities at the Site or to
7 the implementation of this Consent Decree, including, but not limited
8 to, sampling, analysis, chain of custody records, manifests, trucking
9 logs, receipts, reports, sample traffic routing, correspondence, or
10 other documents or information related to the Work. WNG shall also
11 make available to EPA for purposes of investigation, information
12 gathering, or testimony, its employees, non-attorney agents, or
13 representatives with knowledge of relevant facts concerning the
14 performance of the Work but WNG shall not be required to make its
15 legal counsel or the work-product of its legal counsel available to
16 EPA for the purposes identified above.

17 108. a. WNG may assert business confidentiality claims
18 covering part or all of the documents or information submitted to
19 Plaintiff under this Consent Decree to the extent permitted by and in
20 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7),
21 and 40 C.F.R. § 2.203(b). Documents or information determined to be
22 confidential by EPA will be afforded the protection specified in
23 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
24 accompanies documents or information when they are submitted to EPA,
25 or if EPA has notified WNG that the documents or information are not
26 confidential under the standards of Section 104(e)(7) of CERCLA, the
27

1 public may be given access to such documents or information without
2 further notice to WNG.

3 b. WNG may assert that certain documents, records and
4 other information are privileged under the attorney-client privilege
5 or any other privilege recognized by federal law. If WNG asserts
6 such a privilege in lieu of providing documents, WNG shall provide
7 Plaintiff with the following: (1) the title of the document, record,
8 or information; (2) the date of the document, record, or information;
9 (3) the name and title of the author of the document, record, or
10 information; (4) the name and title of each addressee and recipient;
11 (5) a description of the contents of the document, record, or
12 information: and (6) the privilege asserted by WNG. However, no
13 documents, reports or other information created or generated pursuant
14 to the requirements of the Consent Decree shall be withheld on the
15 grounds that they are privileged.

16 108. No claim of confidentiality shall be made with respect to
17 any data, including, but not limited to, all sampling, analytical,
18 monitoring, hydrogeologic, scientific, chemical, or engineering data,
19 or any other documents or information evidencing conditions at or
20 around the Site.

21 XXVI. RETENTION OF RECORDS

22 109. Until 10 years after WNG's receipt of EPA's notification
23 pursuant to Paragraph 63.b of Section XV (Certification of Completion
24 of the Work), WNG shall preserve and retain all records and documents
25 now in its possession or control or which come into its possession or
26 control that relate in any manner to the performance of the Work or
27 liability of any person for response actions conducted and to be

1 conducted at the Site, regardless of any corporate retention policy
2 to the contrary. Until 10 years after WNG's receipt of EPA's
3 notification pursuant to Paragraph 63.b of Section XV (Certification
4 of Completion), WNG shall also instruct its Contractors to preserve
5 all documents, records, and information of whatever kind, nature or
6 description relating to the performance of the Work.

7 110. At the conclusion of this document retention period, WNG
8 shall notify the United States at least 90 days prior to the
9 destruction of any such records or documents, and, upon request by
10 the United States, WNG shall deliver any such records or documents to
11 EPA. WNG may assert that certain documents, records and other
12 information are privileged under the attorney-client privilege or any
13 other privilege recognized by federal law. If WNG asserts such a
14 privilege, WNG shall provide the Plaintiffs with the following:

15 (a) the title of the document, record, or information; (b) the date
16 of the document, record, or information; (c) the name and title of
17 the author of the document, record, or information; (d) the name and
18 title of each addressee and recipient; (e) a description of the
19 subject of the document, record, or information; and (f) the
20 privilege asserted by WNG. However, no documents, reports or other
21 information created or generated pursuant to the requirements of the
22 Consent Decree shall be withheld on the grounds that they are
23 privileged. Further, WNG shall retain all documents, records, or
24 other information which it claims to be privileged until such time as
25 the United States has the opportunity to compel production of such
26 documents, records, or other information.

111. WNG hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

112. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and WNG, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-307

As to EPA:

Leland Marshall
EPA Project Coordinator
Superfund Branch—Waste Management Division

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Between the United States of
America and WNG - 66

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1 United States Environmental Protection Agency
2 Region 10
3 1200 Sixth Avenue
4 Seattle, Washington 98101

5 and

6 Charles E. Findley
7 Director, Waste Management Division
8 United States Environmental Protection Agency
9 Region 10
10 1200 Sixth Avenue
11 Seattle, Washington 98101

12 As to WNG

13 Matthew Dalton
14 Project Coordinator
15 19017 120th Ave. N.E.
16 Suite 107
17 Bothell, Washington 98011

18 and

19 Timothy J. Hogan
20 Washington Natural Gas Company
21 815 Mercer Street
22 (P.O. Box 1869)
23 Seattle, Washington 98111

24 XXVIII. EFFECTIVE DATE

25 113. The effective date of this Consent Decree shall be the
26 date upon which this Consent Decree is entered by the Court, except
27 as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

114. This Court retains jurisdiction over both the subject
matter of this Consent Decree and WNG for the duration of the
performance of the terms and provisions of this Consent Decree for
the purpose of enabling the Parties to apply to the Court at any time
for such further order, direction, and relief as may be necessary or
appropriate for the construction or modification of this Consent
Decree, or to effectuate or enforce compliance with its terms, or to

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1 resolve disputes in accordance with Section XX (Dispute Resolution)
2 hereof.

3 XXX. APPENDICES

4 115. The following appendices are attached to and incorporated
5 into this Consent Decree:

6 "Appendix A" is the ROD.

7 "Appendix B" is the SOW.

8 "Appendix C" is the description and/or map of the Site.

9 "Appendix D" is the Trust Fund Agreement required by Section 20
10 of the Simon Decree establishing the Tacoma Tar Pits Site Trust
11 Fund.

12 "Appendix E" is a form of access agreement between WNG and
13 Burlington Northern Railroad Company.

14 "Appendix F" is a form of access agreement between WNG and Union
15 Pacific Railroad Company.

16 XXXI. COMMUNITY RELATIONS

17 116. WNG shall propose to EPA its participation in the
18 community relations plan to be developed by EPA. EPA will determine
19 the appropriate role for WNG under the Plan. WNG shall also
20 cooperate with EPA in providing information regarding the Work to the
21 public. As requested by EPA, WNG shall participate in the
22 preparation of such information for dissemination to the public and
23 in public meetings which may be held or sponsored by EPA to explain
24 activities at or relating to the Site.
25
26
27

XXXII. MODIFICATION

117. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and WNG. All such modifications shall be made in writing.

118. No material modifications shall be made to the SOW without written notification to and written approval of the United States, WNG, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and WNG.

119. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

120. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. WNG consents to the entry of this Consent Decree without further notice.

1 121. If for any reason the Court should decline to approve this
2 Consent Decree in the form presented, this agreement is voidable at
3 the sole discretion of either party and the terms of the agreement
4 may not be used as evidence in any litigation between the Parties.

5 XXXIV. SIGNATORIES/SERVICE

6 122. The undersigned representative of WNG and the Assistant
7 Attorney General for Environment and Natural Resources of the
8 Department of Justice certifies that he or she is fully authorized to
9 enter into the terms and conditions of this Consent Decree and to
10 execute and legally bind such party to this document.

11 123. WNG hereby agrees not to oppose entry of this Consent
12 Decree by this Court or to challenge any provision of this Consent
13 Decree unless the United States has notified WNG in writing that it
14 no longer supports entry of the Consent Decree.

15 124. WNG shall identify, on the attached signature page, the
16 name, address and telephone number of an agent who is authorized to
17 accept service of process by mail on behalf of that party with
18 respect to all matters arising under or relating to this Consent
19 Decree. WNG hereby agrees to accept service in that manner and to
20 waive the formal service requirements set forth in Rule 4 of the
21 Federal Rules of Civil Procedure and any applicable local rules of
22 this Court, including, but not limited to, service of a summons.


23 SO ORDERED THIS 6 DAY OF Feb, 1992.


24 
25 United States District Judge
26
27


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter
2 of United States v. Joseph Simon & Sons, Inc. et al., relating to the
3 "Tacoma Historical Coal Gasification" Site.

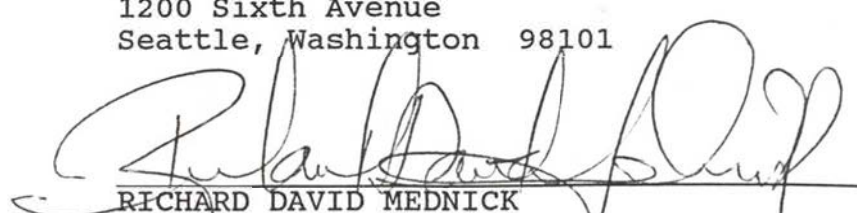
4 FOR THE UNITED STATES OF AMERICA

5 Date: _____

6 
7 BARRY M. HARTMAN
8 Acting Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13 
14 KALYN CHERIE FREE
15 Trial Attorney
16 Environmental Enforcement Section
17 Environment and Natural Resources
18 Division
19 U.S. Department of Justice
20 Washington, D.C. 20530

21 
22 CHARLES E. FINDLEY
23 Director, Hazardous Waste Division,
24 Region 10
25 U.S. Environmental Protection
26 Agency
27 1200 Sixth Avenue
Seattle, Washington 98101

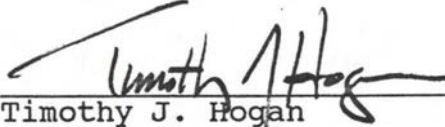
28 
29 RICHARD DAVID MEDNICK
30 Assistant Regional Counsel
31 U.S. Environmental Protection
32 Agency
33 Region 10
34 1200 Sixth Avenue
35 Seattle, Washington 98101

36 United States v. Joseph Simon & Sons, Inc. et al.
37 Consent Decree Signature Page

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter
2 of United States v. Joseph Simon & Sons, Inc. et al., relating to the
3 Tacoma Historical Coal Gasification Site.

4
5 FOR
WASHINGTON NATURAL GAS COMPANY

6
7 Date: 9/27/91


8 Timothy J. Hogan
Vice-President, Legal
815 Mercer St.
9 (P.O. Box 1869)
10 Seattle, Washington 98111

11 Agent Authorized to Accept Service on Behalf of Above-signed
12 Party:

13 Name: Timothy J. Hogan
14 Title: Vice-President, Legal
15 Address: 815 Mercer Street
(P.O. Box 1869)
16 Seattle, Washington, 98111
17
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Tel. Number: (206) 622-6767